IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.R. No.109 of 1992
Date of decision: 27.10.2006

M/s Alpha Toyo Limited, Faridabad.

---Applicant

Vs.

The Commissioner of Income Tax, Rohtak.

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL

HON'BLE MR JUSTICE AJAY KUMAR MITTAL

Present: Mr. Yogesh Putney, Advocate
for the revenue.

ORDER:

This reference has been made at the instance of the assessee by the Income Tax Appellate Tribunal, Delhi Bench 'E', Delhi arising out of its order dated 28.11.1990 in I.T.A. No.3455(Del)/1987 for the assessment year 1984-85 referring following questions of law for opinion of this Court:-

> "1. Whether on the facts and in the circumstances of the case, the Tribunal was right in rejecting the assessee's application for admission of additional grounds?
>
> 2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the amount of interest paid/payable by the assessee to the Industrial Development Bank of India under IDBI Rediscounting Scheme was not includible in the cost of plant and machinery for purposes of allowance of depreciation, investment allowance and additional depreciation?"

The assessing officer and the CIT(A) excluded from the total cost of plant and machinery the sum of Rs.2,58,900/- being the amount of interest component in the instalments paid to the Industrial Development Bank of India (for short, 'IDBI') under Rediscounting Scheme of IDBI and consequently, depreciation investment allowance and additional depreciation were also disallowed. The

assessee moved an application to challenge this aspect by way of additional ground which was disallowed on the ground that the assessee had given up the said ground before the CIT(A) and also by relying upon the explanation 8 to Section 43 of the Income-tax Act, 1961 (for short, "the Act").

Though no one has appeared to assist the Court on behalf of the assessee, we have perused the findings recorded by the Tribunal and heard learned counsel for the revenue.

Re: Q.No.1

The question whether additional ground can be allowed to be raised before the Tribunal has been gone into by the Hon'ble Supreme Court inter alia in ***Jute Corporation of India Limited v. Commissioner of Income-Tax and another*** (1991) 187 ITR 688 and ***National Thermal Power Co. Limited v. Commissioner of Income Tax*** (1998) 229 ITR 383 and it was held that if the plea of the parties is bona fide, such a plea could be allowed to be raised for good reasons. Thus, the question required to be gone into is whether additional ground raised by a party is bona fide.

For the reasons to be given while considering the question No.2, we are of the view that additional ground raised by the assessee was bone fide and the Tribunal was not justified in rejecting the assessee's application for admission of additional ground. The question is thus, answered in favour of the assessee and against the revenue.

Re: Q.No.2

The question whether interest component on the instalments paid in respect of the cost of machinery financed by IDBI has been gone into by this Court in I.T.R. No.580 of 1995 ***Commissioner of Income Tax, Patiala v. Punjab Tractors Limited, Mohali*** decided on 29.09.2006 wherein it was observed:-

> "We are of the view that the Tribunal has rightly followed judgment of the Hon'ble Supreme Court in **Challapalli Sugar Limited'**s case (supra), wherein it was observed:-

> "It would appear from the above that the accepted accountancy rule for determining the cost of fixed assets is to include all expenditure necessary to bring such assets into existence and to put them in working condition. In case money is borrowed by a newly started company which is in the process of constructing and erecting its plant, the interest incurred before the commencement of production on such borrowed money can be capitalised and added to the cost of the fixed assets which have been created as a result of such expenditure. The above rule of accountancy should, in our view, be adopted for determining the actual cost of the assets in the absence of any statutory definition or other indication to the contrary."

Explanation 8 has rightly been held not to be attracted when interest was not paid as such but only as a part of cost under scheme of the IDBI. Similar view has been expressed by different High Courts in **Widia (India) Limited v. Chief Commissioner of Income Tax(Admn) and another,** (1998) 233 ITR 1 (Kart.), **CIT v. Widia (India) limited,** (1992) 193 ITR 475 (Kart.) (SLP (c) No.7272 of 1993 dismissed on 19.4.1993) and **CIT v. Tensile Steel Limited,** (1976) 104 ITR 581 (Guj.).

In view of above, the question referred has to be answered in favour of the assessee and against the revenue.

The reference is disposed of accordingly.

(ADARSH KUMAR GOEL)
JUDGE

October 27, 2006
ashwani

(AJAY KUMAR MITTAL)
JUDGE